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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,878	03/06/2002	Michael R. Schramm		2526

7590 07/26/2005
Michael R. Schramm
350 West 2000 South
Perry, UT 84302

EXAMINER

LAMB, BRENDA A

ART UNIT PAPER NUMBER

1734

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/092,878

Applicant(s)

SCHRAMM, MICHAEL R.

Examiner

Brenda A. Lamb

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/11/2005, 2/17/2005, 1/27/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46 is/are allowed.
- 6) ☒ Claim(s) 21-45 and 47-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/06/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 47-48 and 50-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The originally filed specification fails to teach the container is comprised of a non-annual funnel connected to an opening in a wall of the container wherein the funnel axis

is defined as running substantially from the center of the opening in the wall to substantially the center of an opening in the funnel located within the container, and wherein a cross-sectional shape of the funnel in a position substantially normal to the funnel axis defines a cross-sectional shape having a first breadth dimension and a second breadth dimension and wherein the first breadth dimension is greater than the second breadth dimension.

If applicant disagrees then he should point out support in the specification and/or drawings for the non-annular funnel as well as the support for a funnel axis is defined as running substantially from the center of the opening in the wall to substantially the center of an opening in the funnel located within the container, and wherein a cross-sectional shape of the funnel in a position substantially normal to the funnel axis defines a cross-sectional shape having a first breadth dimension and a second breadth dimension and wherein the first breadth dimension is greater than the second breadth dimension.

As disclosed, the originally filed specification teach the article or workpiece in the kit are chosen from the group consisting of a colorable work piece, a substantially egg shaped work piece, an edible work piece, a substantially egg shaped edible work piece, and an egg. The term "edible matter" reads on liquids which are not disclosed by the originally filed specification.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 28-29, 31, 33, 49 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 and 21-25 of copending Application No. 09/707,156 (Schramm et al).

Schramm et al claims a kit comprising a container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container, and an edible article/work piece removably contained within said container. Schramm et al work piece/article is obviously substantially removably contained therein in order for one to consume the contents therein. Schramm et al claims the container is transparent. Schramm et al claims the container inhibits the spillage of the substance, a candy article/lollipop which reads on the claimed non-gaseous fluid contents, contained therein when the container is oriented in any position. Thus claims 28-29, 33 and 49 are obvious over Schramm et al. With respect to claim 31, Schramm et al fails to claim the container is formed from a plastic sheet. However, it would have been obvious to having

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ordinary skill in the art at the time the invention was made to construct the container from a plastic material or sheet since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design. In re Leshin, 125 USPQ 416.

This is a provisional obviousness-type double patenting rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

It is noted in the amendment filed 2/14/2005 applicant has canceled in the instant application priority and therefore the benefit claimed under 35 USC 120 to the following US Patent Application Serial Numbers: US Patent Application Serial Number 09/021,617 filed February 10, 1998 now US Patent No 5,908,057, which

was a continuation of co-pending US Patent Application Serial Number 08/608,854 filed February 29, 1996, now US Patent No 5,832,969, which was a continuation-in-part of co-pending US Patent Application Serial Number 08/086,541 filed July 1, 1993, now US Patent No. 5,495,876, which was a continuation-in-part of co-pending US Patent Application Serial Number 07/828,345 filed January 30, 1992 now US Patent No. 5,246,046 and reissued March 9, 1999. As a result of the cancellation of a benefit claim to the above cited applications, the earliest claim benefit filing for the instant application is the filing date for the parent application 09/287,798 which is 4/07/1999 (see MPEP 201.11).

Claims 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schramm 5,246,046 in view of Broshi et al .

Schramm '046 teaches a bubble solution kit comprising a container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container, at least one utensil at least partially removably contained within the container, the utensil having a substantially elongated handle portion and an open loop portion, and liquid matter removably contained within the container. Schramm '046 fails to teach the liquid matter is edible matter. However, it would have been obvious to modify the Schramm '046 bubble solution kit so as to provide as the liquid matter an edible liquid matter such as taught by Broshi et al for the taught safety advantages of providing an edible bubble solution. With respect to claim 51, the utensil as shown in

Figures dips into the liquid matter in the container thereby reads on a dipper. The recitation that the dipper is a wire egg dipper is intended end use. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

Claims 40, 43 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Martindale.

Martindale teaches the design of a kit comprising the combination of a container and colorant contained within the container wherein said container includes an inner cavity, an exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between said inner cavity and the exterior of said container, and wherein said colorant defines a predetermined quantity of colorant powder in the container. Martindale teaches every element of the claimed kit as set forth in claim 40. With respect to claim 45, Martindale teaches the container resists the spillage of non-gaseous fluid contents of the container when the container is oriented in any orientation. With respect to claim 43, Martindale teaches the container is made from a plastic material. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device itself. Therefore, this limitation has not been given patentable weight.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Martindale.

Martindale is applied for the reasons noted above. Martindale shows in his Figures that the container is comprised of a first and second member. Martindale first member is detachably engagable to the second member and further is obviously at least partially sealingly engageable with the second member in order to prevent leakage of the contents from the container.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Martindale in view of Lintvedt.

Martindale is applied for the reasons noted above. Martindale fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container such as color.

Claims 21-22, 24-28,30-34,36-40,42-45 and 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over under the combination of Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Martindale and Japan 11-227388.

Schramm '046 teaches a kit comprising a container designed to prevent spilling of flowable material contained therein, the container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container, at least one utensil at least partially removably contained within the container, the utensil

having a substantially elongated handle portion and an open loop portion, and liquid matter removably contained within the container.

Hunter teaches a kit comprising the combination of a container designed to prevent spilling of flowable material with a flowable material therein, wherein the flowable material can comprise a liquid, paint, or a granular material. Hunter teaches the container having an inner cavity and an opening in a wall of the container, the opening having a funnel connected to the opening to provide communication between the inner cavity and an exterior of the container.

Japan '388 teaches a kit comprising the combination of a container and a colorant, coloring liquid, contained within the container and a utensil, brush 8, being colored with the colored liquid wherein the container having an inner cavity, and exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between the inner cavity and the exterior of the container. Note Japan '388 also teaches the invention may include the combination of a drinkable liquid and a straw.

Martindale teaches the design of a kit comprising the combination of a container and flowable material, a granular or powdered dye/colorant, contained within the container wherein said container includes an inner cavity, an exterior, an opening in a wall of the container and a funnel connected to the opening to provide communication between said inner cavity and the exterior of said container.

Law teaches egg dyeing using a kit egg dyeing kit which uses the combination of a workpiece, an egg, at least one utensil (egg ladle and a brush), a colorant (dye

tablets) and a container. Law also teaches the mess associated with the egg dyeing process which occurs as a result of the spillage of the flowable materials contained within the container.

As evidenced by Schramm, Hunter, Japan '388 and Martindale, it is known to provide containers with a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container in order to prevent spillage of flowable non-gaseous material (solids or liquids). Therefore, it would have been obvious to one of ordinary skill in the art to substitute the container in an egg dyeing kit such as disclosed by Law with another container having a funnel that are connected to the opening of the container so as to provide communication between the inner cavity and the exterior of the container such as taught from the combined teaching of Schramm, Hunter, Japan '388 and Martindale since the combined teaching of Schramm, Hunter, Japan '388 and Martindale as discussed above teaches that such container prevent spillage of flowable non-gaseous material therefrom and especially in view of the disclosure of Law of the problems of associated with the spillage of the flowable material from the container of the egg dyeing process. Thus claims 21-22, 28, 27, 33, 34, 39, 40, 45 and 49 are obvious over the above cited combination of references. Further, absent the new matter, claims 47-48 are obvious over the above cited combination. In any event, if applicant points out support for the annular opening, it would have been an obvious matter of design choice to provide the opening of the container in the Law egg dyeing kit as modified with a shape with the scope of the claims 47-48 dependent on end use requirement of the kit (see In re

Dailey, 149 USPQ 47). With respect to claims 50-51, Law shows the utensils in the kit include an egg ladle or wire egg dipper. Law teaches an egg ladle or wire egg dipper includes a substantially elongated handle portion and open loop portion. With respect to claim 25, 31, 37 and 43, Schramm, Japan '388 and Martindale each teach constructing the container from a plastic material. The method of forming the container from plastic in the form of a sheet is not germane to issue of the patentability of the device/container itself. Therefore, this limitation has not been given patentable weight. With respect to claims 24, 30, 36 and 42, Schramm, Japan '388 and Martindale each show in their Figures that the container is comprised of a first and second member. Schramm, Japan '388 and Martindale each show the container having a first member which is detachably engagable to the second member which is obviously at least partially sealingly engageable with the second member in order to prevent leakage of the contents from the container. With respect to claims 26, 32, 38 and 44, absent how the flow channel relates to other structural elements of the container especially, the funnel of the container, the walls of the funnel of the Schramm, Hunter, Japan '388 and Martindale can serve as a flow channel.

Claims 23, 29, 35 and 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over under Law in view of Schramm 5,246,046, Great Britain 1,428,356 (Hunter), Martindale and Japan 11-227388 in further in view of Lintvedt.

Law, Schramm, Hunter, Japan '388 and Martindale are applied for the reasons noted above but fails to teach the container is a transparent container. However, it would have been obvious to modify the Martindale container to construct it from a

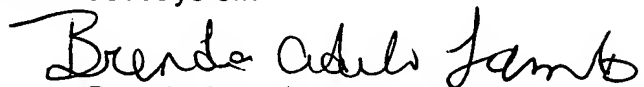
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material that is transparent but obvious to do so for the advantages taught by Lintvedt of using a transparent container - enables the user to discern characteristics of the contents within the transparent container such as color.

Claim 46 is allowed.

Applicant's arguments filed in the amendments of 4/11/2005, 2/17/2005 and 1/27/2005 with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to Brenda A. Lamb at telephone number (571) 272-1231. The examiner can normally be reached on Monday and Wednesday thru Friday with alternate Tuesdays off.

A handwritten signature in cursive script that reads "Brenda A. Lamb".

Brenda A Lamb
Examiner
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